

# EXHIBIT 11

***REDACTED***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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DOROTHY FORTH, et al.,  
Plaintiffs,

v.

WALGREEN CO.,

Defendant.

Case No.:

1:17-cv-2246

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VIDEO CONFERENCE VIA ZOOM DEPOSITION OF

WENDY BARNES

August 18, 2020

9:15 a.m.

Charlotte, North Carolina

Reported by: Audra M. Smith, RPR, FCRR

Video by: DeAndrae Shivers

Technical support by: Carl Gethers

1        simply that that is, in fact, their  
2        consumer-facing pricing; that is what anyone could  
3        obtain to get those prescriptions, juxtaposed  
4        against either the PSC or other retailer club  
5        programs that require some type of action by the  
6        patient in order to participate. Whether that's  
7        signing up, opting in, paying a fee, all of those  
8        would constitute some type of barrier of entry.  
9        So that's how I would compare and contrast the two  
10       programs and how Express Scripts viewed them.

11           Q.    Is that also how Medco viewed them at the  
12       time?

13           A.    Yes. That's accurate.

14           Q.    When you say consumer-facing pricing, is  
15       another term for that "retail pricing"?

16           A.    Yes. It would be the generally  
17       advertised price if you were to not present any  
18       benefit and ask what the price is for a particular  
19       drug.

20           Q.    And do you understand that to be the  
21       retail price? In other words, the retail price is  
22       the price if you were to not present any benefits?

23           A.    Yes. That's correct.

24           Q.    And by benefits, you would include the  
25       Prescription Savings Club, correct?

1           A.     Yes, I would.

2           Q.     And are you aware that other  
3           pharmacies -- I think you already referenced this.  
4           But are you aware that other pharmacies have  
5           prescription savings programs similar to --

6           A.     Yes.

7           Q.     Let me rephrase the question.  
8                   Are you aware that other pharmacies have  
9           prescription savings programs?

10          A.     Yes, I'm aware.

11          Q.     And how did Medco learn about those  
12          programs?

13          A.     Through similar means would be my best  
14          guess, Michael, meaning either through press  
15          releases or in ongoing business relationship  
16          conversations with those retailers.

17          Q.     And are there industry publications?

18          A.     Yes. There are a multitude.

19          Q.     Is "Drug Store News" one of them?

20          A.     It, in fact, is.

21          Q.     And was "Drug Store News" active in 2006?

22          A.     Yes.

23          Q.     And does "Drug Store News" publish major  
24          developments in the -- or strike that.

25                   Does "Drug Store News" publish

[illegible]

[illegible]

5 BY MR. LEIB:

6 Q. Were there prescription savings clubs in  
7 1994?

8 A. I'm not certain if there were or weren't.

9 Q. I can represent to you, of course, that,  
10 as I have before, that Walmart's began in 2006.  
11 With that as a reference point, do you know  
12 whether pharmacy prescription savings clubs were  
13 prevalent in 1994?

14 A. I'm going to suggest they weren't. But  
15 just to clarify, I would also not, in answering  
16 this question, affirm that Walmart's was a club  
17 program. That is not how Medco or Express Scripts  
18 would have viewed the Walmart pricing.

19 Q. The major pharmacy programs, the CVS  
20 Health Savings Pass, Walgreens' Prescription  
21 Savings Club, and other major pharmacies' savings  
22 programs, savings club programs, do you know if  
23 they were in existence in 1994?

24 A. I'm going to suggest they weren't, given  
25 knowledge of when certain other programs started.





[illegible]



David Feldman Worldwide  
A Veritext Company

[REDACTED]

14 Q. Did the term "cash transaction" have the  
15 same meaning in the pharmaceutical industry at the  
16 time Express Scripts entered into the 2009  
17 Walgreens agreement as it does today?

18 MR. McKANY: Objection, form.

19 A. Yes.

20 BY MR. LEIB:

21 Q. And how does Express Scripts know that?

22 A. That would be based upon their ongoing  
23 participation in contractual relationships with  
24 the seventy-some-odd-thousand retail pharmacies  
25 they contract with, in addition to their

1 historical knowledge of what cash transaction  
2 meant in the multitude of clients and retail  
3 pharmacy contracts.

4 Q. At the time it entered into the 2009  
5 Walgreens agreement, was Express Scripts aware of  
6 Walgreens Prescription Savings Club?

7 A. Yes.

8 Q. At the time it entered into the 2009  
9 Walgreens agreement, was Express Scripts aware  
10 that a person had to enroll and pay a membership  
11 fee to join a Prescription Savings Club?

12 MR. McKANY: Objection, form.

13 A. Yes. They would have known that.

14 BY MR. LEIB:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 Q. Let's look at Tab O, and that's  
11 previously been marked as Amiet Exhibit 80. And  
12 I'm specifically saying Amiet Exhibit 80 because  
13 there was a different Exhibit 80. I don't -- I  
14 want this to be clear.

15 MR. BOLTE: It's available now.

16 BY MR. LEIB:

17 Q. Can you take a look at that and tell me  
18 if you recognize that document? I don't see it  
19 yet.

20 MR. BOLTE: You might have to refresh  
21 your page.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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A Veritext Company

1 STATE OF NORTH CAROLINA )

2 COUNTY OF FORSYTH )

3 REPORTER'S CERTIFICATE

4 I, Audra Smith, Registered Professional  
5 Reporter in and for the above county and state, do hereby  
6 certify that the deposition of the person hereinbefore named  
7 was taken before me at the time and place hereinbefore set  
8 forth; that the witness was by me first duly sworn to testify  
9 to the truth, the whole truth and nothing but the truth; that  
10 thereupon the foregoing questions were asked and the  
11 foregoing answers made by the witness which were duly  
12 recorded by me by means of stenotype; which is reduced to  
13 written form under my direction and supervision, and that  
14 this is, to the best of my knowledge and belief, a true and  
15 correct transcript.

16 I further certify that I am neither of  
17 counsel to either party nor interested in the events of this  
18 case.

19 IN WITNESS WHEREOF, I have hereto set my  
20 hand this 31st day of August, 2020.

21  
22 

23 Audra Smith, RPR, FCRR

24  
25 Notary Number: 201329000033